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JUDGE BACKS DISCLOSURE OF WAR DATA

But Appeals Court Bars Post Series Pending A New Hearing

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Washington, June 21—The public interest requires "disclosure, not suppression of articles based on the secret Pentagon study of the Vietnam war, and the Washington Post cannot be barred from publishing them, a federal district judge ruled today.

A U.S. circuit court of appeals later extended for another 24 hours the restraining order prohibiting the Post from printing the articles so that it could hear a government appeal tomorrow afternoon before all nine judges.

Thus the government for the second time won a restraining order from the court of appeals after being refused it by Judge Gerhard A. Gesell, who first declined to issue a temporary order last Friday—it was issued early Saturday by the appellate court—and then barred a preliminary injunction today.

Similar Turn

Meanwhile the New York Times case took a similar turn. The court of appeals in New York announced that its eight judges (there is one vacancy) would hear tomorrow a government appeal against a ruling allowing the Times to resume its series on the report. A court of three judges was to have heard the case today.

Both cases may thus be ready for Supreme Court consideration this week.

Here Judge Gesell, after four hours of secret testimony on the significance of the study, said the government had failed to

meet the "burden of justifying censorship.

He said the government had not shown that the documents, whatever their origins, currently deserved the designation "top secret. He said that according to law, this designation applied to information that might lead to war, an armed attack on the United States or an ally, a break in diplomatic relations, or compromise of military, defense, scientific or technical data.

No Immediate "Threat"

"There is not here a showing of an immediate grave threat to the national security which in close and narrowly defined circumstances would justify prior restraint on publication, he said.

He gave greater weight to the government's contention that the release of documents could injure American diplomacy by making foreign governments wary of dealing with the United States.

But he said the First Amendment, with its guarantee of freedom of the press, was more important. "There is no basis upon which the court may adjust it to accommodate to the desires of foreign governments, dealing with our diplomats," he said as he made an oral decision from the bench.

"20 Minutes"

Judge Gesell, delivering his order shortly before the original ban on publication expired at 5 P.M., said he would not delay his order, "under any circumstances."

When Kevin T. Maroney, presenting the government's case, then asked him for a brief delay while he went to the court of appeals again, the judge said, "You have 20 minutes. I am sure they are waiting for you upstairs."

The judge's comment that the government failed to prove its case about the security threat came in the face of one of the few notable comments made in open court. Dennis J. Doolin, an assistant secretary of defense, said the 47-volume study, completed in 1969, contained "operation plans." Judge Gesell asked him, "Are they current?"

"They were—they are," Mr. Doolin replied.

The open questioning stopped there. It was then that Mr. Doolin testified in

closed session. It was understood that he referred to plans mentioned in the study, such as outlines of bombing targets or methods of mining harbors, that still could be put to use, and not to imminent operational plans.

Judge Gesell, saying he disliked his role as "quasi-censor," emphasized the "wide-reaching, long-standing, often vitriolic debate" over the war, which he called "an issue of paramount public importance."

"Doubts And Rumors"

"Censorship at this stage raises doubts and rumors that feed the fires of distrust," he said. "Our democracy depends for its future on the informed will of the majority."

The Post presented in evidence—all in open court—only a series of affidavits from its reporters describing ways in which classified data had been leaked to them by the government when it suited the government's purpose. One came from Benjamin C. Bradlee, executive editor, and described when President John F. Kennedy read him a secret transcript of the Kennedy-Khrushchev meeting in Vienna. Others were more current.

The government conceded in argument that the two articles published in last Friday's and Saturday's editions of the Post had not violated national security. In New York, government witnesses had contended that the Times articles had done so, and that the Post's were worse.

Government affidavits in the case also showed that the White House did not obtain a copy of the study until last Monday (The Times had started publishing it last Sunday).

Representative Bob Eckhardt (D., Texas), in an argument Judge Gesell called "eloquent" and "persuasive," contended that information in the secret study was "extremely important both to us [27 congressmen he represented as a friend of the court] and to the public." He said while the Post represented one side of First Amendment protection, he and others who wanted to read what it could disclose represented the other.

Mr. Maroney, in argument, said continued publication could force a "breakdown in our capability to deal with foreign governments." He said the government had begun a

study to see if some of the material could be declassified and

said the Post could wait for that examination to be finished.

For the Post, attorney William C. Glendon, said the government's claims of "irreparable injury" amounted to no more than "possibilities ... concerns ... hypotheses."

What the Justice Department was seeking, he said, was comparable to the "system that exists in a Communist state."

By the standards of its argument, Mr. Glendon said, the government could claim a right to prosecute former President Lyndon B. Johnson for quoting classified documents in his forthcoming memoirs, which Mr. Bradlee said he had read.

2 Senators Assail Times

Washington, June 21, (AP) — Two senior Republican senators accused the New York Times today of setting itself above the law by publishing secret Pentagon documents about the origins of United States involvement in the Vietnam war.

Gordon Allott, of Colorado, chairman of the Senate Republican Policy Committee, called the Times stories "doubtless the most tragic demonstration of public irresponsibility we have seen in recent years and likely will have very damaging and far-reaching consequences for our country."

Later, Senator Wallace F. Bennett of Utah, singled out both the Times and Washington Post articles.

"If it is necessary to review American involvement in Vietnam," he said in a statement, "it should be done through an investigation by Congress and not in violation of current security laws through the press."

Mr. Bennett said the vital foreign policy questions "will be jeopardized if foreign governments know that top-secret papers and discussions in the United States and with the United States are no longer secure."

In his statement, Senator Allott said the Times' claim that publication of the documents does not jeopardize the national security "deliberately misses the point."